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Attorneys for Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

Chapter 11

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,
 Debtor.

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

**EMERGENCY MOTION FOR ORDER
 EXTENDING THE DEBTORS'
 EXCLUSIVE PERIOD TO FILE A PLAN
 TO SEPTEMBER 15, 2006
 (AFFECTS ALL DEBTORS)**

Affects:

- ☒ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC

Date: August 31, 2006
 Time: 9:30 a.m.

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Each of the above-captioned Debtors, with the consent of each of the four official committees appointed by the United States Trustee in these jointly administered bankruptcy cases (the “Committees”), hereby move the Court on for entry of an order extending the exclusive period for the Debtors to file a plan of reorganization. In support of this Emergency Motion, the Debtors state as follows:

1. Based on a stipulation executed by the Debtors and each of the Committees, the Court entered a Stipulated Order on August 31, 2006 extending to September 15, 2006 the exclusive period for the Debtors to file a plan of reorganization. The Stipulated Order is attached hereto as **Exhibit “A”** (Docket #1223).

2. The Debtors have given notice to all parties in interest as required by the Order re Case Management Procedures by the service of the Order Shortening Time entered on September 6, 2006 (Docket #1245) which references this motion.

3. By making this motion in conjunction with the four official committees, the Debtors are not waiving their right to file a plan or plans of reorganization that do not have the consent of all of the official committees.

MEMORANDUM OF LAW

Bankruptcy Code §1121 provides for a period time when only the debtor in possession can file a plan of reorganization. Subsection (d) provides:

(d) On request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

“Cause” is not defined by the Code. Courts have struggled with the definition. One district court stated:

A review of the case law indicates that, although there are a large number of potential factors that have been identified by various courts as being pertinent to a determination of whether cause has been shown, many courts have chosen to rely upon relatively few factors --- albeit different ones --- to determine whether the necessary cause exists to alter the statutory time period set forth in 11 U.S.C. § 1121. See, e.g., In re Amko Plastics, Inc., 197 B.R. at 77 (relying solely upon the debtor's rapid turn-around effort, the lack of prejudice to the creditors, and the

absence of an impermissible motivation for the debtor's request for an extension, to conclude that the requisite cause had been shown); In the Matter of Lake in the Woods, 10 B.R. 338, 345 (E.D.Mich.1981) (relying solely upon the legislative history of § 1121(d) to conclude that the requisite cause had not been shown). Furthermore, it appears that the choice of pertinent factors depends largely upon the factual nature of the case before the court. See In re Amko Plastics, Inc., 197 B.R. at 76 ("We are of the opinion ... that the debate by the parties regarding size and complexity is beside the point and does not fairly deal with the thrust of the evidence. Different considerations should be applied in this case."). Thus, a bankruptcy court faced with the issue of whether the necessary "cause" exists to extend the exclusivity period has a high degree of flexibility in fashioning the appropriate test to be applied, and is not required to apply any particular set of factors, or number of factors, in every case. See In re Public Serv. Co. of New Hampshire, 88 B.R. 521, 534 (Bankr.D.N.H.1988) ("the legislative intent [behind § 1121(d)] has been construed to leave the question [of cause] to the reorganization court in the exercise of its discretion and to promote maximum flexibility to suit various types of reorganization proceedings").

In re Elder-Beerman Stores Corp., 1997 WL 1774880 (S.D.Ohio 1997). Another Court stated it as follows:

The Code does not define "cause" for reducing the exclusivity period. Courts have specified the following factors for determining whether to terminate the exclusivity period: 1) the debtor's use of exclusivity period to force creditors to accept an unsatisfactory or unconfirmable plan; 2) the debtor's delay in filing a plan; 3) gross mismanagement of the debtor's operations; and 4) "acrimonious relations" between the debtor's principals.

In re Situation Management Systems, Inc., 252 B.R. 859, 863 (Bankr. D.Mass. 2000) (citations omitted).

In this case, the Debtors in Possession and the four Official Committees have worked diligently to prepare a joint plan and to avoid the potential expense, litigation and delay which would be caused by competing plans and the four Committees have consented to this extension. While there is no guarantee of successful conclusion of the joint plan process, a short continuance of exclusivity would provide the time for the process to be completed. The facts are that 1) the Debtors are not using exclusivity to force creditors to accept anything; 2) the Debtor is not delaying filing a plan except to consummate negotiations with the Committees; 3) there is no allegation of mismanagement by the Debtors' current management; and 4) there is no problem between Debtors' principals delaying a plan.

1 WHEREFORE, the Debtors respectfully request that the Court ratify the approval of the
2 Stipulated Order and extend the Debtors' exclusive period for filing a plan to September 15, 2006
3 and to enter an order further extending the Debtors' exclusive period for filing a plan to such
4 further date as stipulated by all of the four official committees.

5 Dated: September 7, 2006

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6
7
8 and
9

10 /s/ Lenard E. Schwartzer, Esq.

11 Lenard E. Schwartzer, Esq.

12 Jeanette E. McPherson, Esq.

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EXHIBIT “A”



Entered on Docket
August 31, 2006

Hon. Linda B. Riegle
United States Bankruptcy Judge

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Attorneys for Debtors and Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:	Case No. BK-S-06-10725 LBR
USA COMMERCIAL MORTGAGE COMPANY,	Case No. BK-S-06-10726 LBR
Debtor.	Case No. BK-S-06-10727 LBR
In re:	Case No. BK-S-06-10728 LBR
USA CAPITAL REALTY ADVISORS, LLC,	Case No. BK-S-06-10729 LBR
Debtor.	Chapter 11
In re:	Jointly Administered Under
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,	Case No. BK-S-06-10725 LBR
Debtor.	Date: N/A
In re:	Time: N/A
USA CAPITAL FIRST TRUST DEED FUND, LLC,	
Debtor.	
In re:	

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1 USA SECURITIES, LLC,

Debtor.

2 Affects:

- 3 ☒ All Debtors
 4 ☐ USA Commercial Mortgage Company
 5 ☐ USA Securities, LLC
 6 ☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC

**STIPULATED ORDER EXTENDING THE
DEBTORS' EXCLUSIVE PERIOD TO
FILE A PLAN TO SEPTEMBER 15, 2006
(AFFECTS ALL DEBTORS)**

7 The matter before the Court is a Stipulation, evidenced by the signatures of undersigned
 8 counsel, between USA Commercial Mortgage Company, USA Capital Diversified Trust Deed
 9 Fund, LLC, USA Capital First Trust Deed Fund, LLC, USA Securities, LLC and USA Capital
 10 Realty Advisors, LLC (collectively, the "Debtors"), on the one hand, and the Official Committee
 11 of Equity Security Holders of USA Capital First Trust Deed Fund, LLC, the Official Committee of
 12 Executory Contract Holders of USA Commercial Mortgage Company, the Official Committee of
 13 Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC and the Official
 14 Committee of Unsecured Creditors for USA Commercial Mortgage Company (collectively, the
 15 "Committees"), on the other hand, extending the exclusive period set forth in 11 U.S.C. § 1121 for
 16 the Debtors to file a plan to September 15, 2006 in order to allow the Debtors and the Committees
 17 additional time to further negotiate terms of a plan (or plans) of reorganization for the Debtors.
 18 This is the second such stipulation. Pursuant to the first stipulated order extending exclusivity,
 19 which was entered by the Court on August 11, 2006 (docket no. 1139), the exclusive period for
 20 the Debtors to file a plan was extended from August 11, 2006 to August 31, 2006. The Court has
 21 considered the applicable authorities, including 11 U.S.C. § 1121(d)(1), and the basis for this
 22 stipulation, and for good cause appearing, it is

23 ORDERED that:

24 (1) The Stipulation is APPROVED;

25 (2) The exclusive period set forth in 11 U.S.C. § 1121(b) is extended from August 31,
 26 2006 to September 15, 2006 (the "New Exclusivity Deadline"); and

(3) No extensions of the New Exclusivity Deadline shall be granted unless all of the Committees consent to such an extension.

Submitted and approved by:

/s/ Annette W. Jarvis

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Approved by:
GORDON & SILVER, LTD.

By: /s/ Rob Charles
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By: /s/ Gerald M. Gordon
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*Counsel for the Official Committee of
Holders of Executory Contract Rights of
USA Commercial Mortgage Company*

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2
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4 Approved by:
5 **BECKLEY SINGLETON, CHTD. and**
6 **ORRICK, HERRINGTON & SUTCLIFFE LLP**

Approved by:
STUTMAN TREISTER & GLATT, P.C. and
SHEA & CARLYON, LTD.

7 By: /s/ Marc A. Levinson
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